

Judge Pechman

CR 02-255 #6

FILED  
LODGED  
ENTERED  
RECEIVED

JUL 30 2002

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
DEPUTY

UNITED STATES OF AMERICA,

Plaintiff,

v.

DONAVON C. CLAFLIN,

Defendant.

NO. CR02-255P

PLEA AGREEMENT

~~FILED Under Seal~~

Come now the United States of America, by and through Mark Bartlett, Acting United States Attorney, and Jeffrey B. Coopersmith, Ye-Ting Woo, and Richard E. Cohen, Assistant United States Attorneys for the Western District of Washington, and the defendant, DONAVON C. CLAFLIN, and his attorney, David B. Bukey, and enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(e).

1. Waiver of Indictment. Defendant, having been advised of the right to be charged by Indictment, agrees to waive that right and enter a plea of guilty to the charges brought by the United States Attorney in an Information.

2. The Charges. Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enter a plea of guilty to the following charges contained in the Information. By entering this plea of guilty, Defendant hereby waives all objections to the form of the charging document.

PLEA AGREEMENT  
(Donavon C. Claflin, Case No. CR02-255R) - 1

UNITED STATES ATTORNEY  
601 UNION STREET, SUITE 5100  
SEATTLE, WASHINGTON 98101-3943  
(206) 533-7970

1           a.     Conspiracy to Commit Securities Fraud, Unlawful Sale of  
2     Unregistered Securities, and Mail Fraud, as charged in Count 1 of the Information, in  
3     violation of Title 18, United States Code, Section 371; and

4           b.     Securities Fraud, as charged in Count 2 of the Information, in  
5     violation of Title 15, United States Code, Sections 77q(a) and 77x.

6           3.     The Penalties. Defendant understands that the maximum statutory penalties  
7     for Counts 1 and 2 of the Information are as follows:

8           a.     Count 1 (Conspiracy): imprisonment for up to five (5) years, a fine  
9     of up to two hundred fifty thousand dollars (\$250,000), a period of supervision following  
10    release from prison of between two (2) and three (3) years, and a one hundred dollar  
11    (\$100) penalty assessment.

12          b.     Count 2 (Securities Fraud): imprisonment for up to five (5) years, a  
13    fine of up to two hundred fifty thousand dollars (\$250,000), a period of supervision  
14    following release from prison of between two (2) and three (3) years, and a one hundred  
15    dollar (\$100) penalty assessment.

16                 Defendant understands that the sentences for Counts 1 and 2 of the  
17    Information may be imposed consecutively, such that the Court may sentence the  
18    defendant to a maximum of ten (10) years imprisonment, and a five hundred thousand  
19    dollar (\$500,000) fine. The Court may also impose an alternative fine based on gain or  
20    loss equal to twice the gross gain or twice the gross loss. The defendant further  
21    understands and agrees that he will be required to pay a total penalty assessment of two  
22    hundred dollars (\$200) at or before the time of sentencing.

23                 Defendant agrees that any monetary penalty the Court imposes, including  
24    the special assessment, fine, costs or restitution, is due and payable immediately, and  
25    further agrees to submit a completed Financial Statement of Debtor form as requested by  
26    the United States Attorney's Office.

27                 Defendant understands that supervised release is a period of time following  
28    imprisonment during which he will be subject to certain restrictions and requirements.

1 Defendant further understands that if supervised release is imposed and he violates one or  
2 more its conditions, he could be returned to prison for all or part of the term of supervised  
3 release that was originally imposed. This could result in Defendant serving a total term of  
4 imprisonment greater than the statutory maximum stated above.

5 4. Rights Waived by Pleading Guilty. Defendant represents to the Court that  
6 he is satisfied that his attorney has rendered effective assistance. Defendant understands  
7 that, by pleading guilty, he knowingly and voluntarily waives the following rights:

- 8 a. The right to plead not guilty, and to persist in a plea of not guilty;
- 9 b. The right to a speedy and public trial before a jury of Defendant's  
10 peers;
- 11 c. The right to the assistance of counsel at trial;
- 12 d. The right to be presumed innocent until guilt has been established at  
13 trial, beyond a reasonable doubt;
- 14 e. The right to confront and cross-examine witnesses against  
15 Defendant;
- 16 f. The right to compel or subpoena witnesses to appear on Defendant's  
17 behalf;
- 18 g. The right to testify or to remain silent at trial, at which such silence  
19 could not be used against Defendant; and
- 20 h. The right to appeal a finding of guilt or any pretrial rulings

21 5. Applicability of Sentencing Guidelines. Defendant understands and  
22 acknowledges the following:

- 23 a. The United States Sentencing Guidelines, promulgated by the  
24 United States Sentencing Commission, are applicable to this case;
  - 25 b. The Court will determine Defendant's applicable Sentencing  
26 Guidelines range at the time of sentencing;
- 27  
28

1 c. The Court may impose any sentence authorized by law, including a  
2 sentence that, under some circumstances, departs from any applicable Sentencing  
3 Guidelines range up to the maximum term authorized by law;

4 d. The Court is not bound by any recommendation regarding the  
5 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines  
6 range offered by the parties, or by the United States Probation Department; and

7 e. Defendant may not withdraw a guilty plea solely because of the  
8 sentence imposed by the Court.

9 6. Ultimate Sentence. Defendant acknowledges that no one has promised or  
10 guaranteed what sentence the Court will impose.

11 7. Elements of the Offenses.

12 a. The elements of the offense of Conspiracy to Commit Securities  
13 Fraud, Unlawful Sale of Unregistered Securities, and Mail Fraud, as charged in Count 1  
14 of the Information, in violation of Title 18, United States Code, Section 371, are as  
15 follows: (i) there was an agreement between Defendant and at least one other person to  
16 commit securities fraud, the unlawful sale of unregistered securities, or mail fraud, or at  
17 least one of these offenses; (ii) Defendant became a member of the conspiracy knowing  
18 of at least one of its objects and intending to help accomplish such object or objects; and  
19 (iii) one of the members of the conspiracy performed at least one overt act for the purpose  
20 of carrying out the conspiracy.

21 b. The elements of the offense of Securities Fraud, as charged in Count  
22 2 of the Information and as an object of the conspiracy charged in Count 1 of the  
23 Information, in violation of Title 15, United States Code, Sections 77q(a) and 77x, are as  
24 follows. (i) in the offer or sale of securities Defendant employed a device, scheme, or  
25 artifice to defraud; obtained money or property by means of untrue statements of material  
26 facts or failure to state material facts which made what was said, under the circumstances,  
27 misleading; or engaged in a transaction, practice, or course of business that operated, or  
28 would operate, as a fraud or deceit upon a purchaser; (ii) Defendant acted willfully,

1 knowingly, and with the intent to defraud; and (iii) Defendant used, or caused to be used,  
2 any means or instruments of transportation or communication in interstate commerce or  
3 the mails in furtherance of the scheme.

4 8. Restitution. Defendant understands that the Court will order the defendant  
5 to pay restitution to victims of the offense, as required by law. Defendant agrees to make  
6 restitution to all victims of the offenses of conviction, as well as to all victims who  
7 incurred losses caused by all of defendant's relevant conduct, including, without  
8 limitation, all investors in Znetix, Inc., Project X, Inc., Health Maintenance Centers, Inc.,  
9 Cascade Point LLC, Cascade Pointe of Arizona LLC, Cascade Pointe of Nevis, LLC, and  
10 all affiliated entities. Defendant shall receive credit for any amounts already paid or  
11 collected. The total restitution amount shall be due and payable immediately upon  
12 sentencing, and shall be paid in accordance with a schedule of payments as set by the  
13 United States Probation Office and ordered by the Court in accordance with the  
14 procedures set forth in Title 18, United States Code, Section 3663, 3663A, and 3664.  
15 Defendant's restitution obligation shall be joint and several with any other individuals  
16 who are charged and convicted of having been involved in the same conspiracy and  
17 scheme to defraud.

18 9. Loss Amount. The United States and Defendant agree that the correct  
19 amount of the loss is between fifty million dollars (\$50,000,000) and one hundred million  
20 dollars (\$100,000,000) for purposes of applying the applicable loss table in the  
21 Sentencing Guidelines.

22 10. Statement of Facts. The parties agree on the following facts in support of  
23 Defendant's guilty plea and for purposes of calculating the base offense level of the  
24 Sentencing Guidelines. Defendant admits he is guilty of the charged offenses.

25 **COUNT 1 - THE CONSPIRACY**

26 From in or about 1995, and continuing thereafter until a time unknown but  
27 at least until in or about October 2001, at Seattle, Bellevue, and Bainbridge Island, within  
28 the Western District of Washington, and elsewhere, the defendant, DONAVON C.  
CLAFLIN, together with other persons known and unknown to the United States  
Attorney, did unlawfully, willfully, and knowingly combine, conspire, confederate and

1 agree among themselves and each other to commit certain offenses against the  
United States, as follows:

2 INTRODUCTION

3 a. Health Maintenance Centers, Inc. ("HMC") was incorporated in  
4 Washington State on May 12, 1995, and was administratively dissolved and reinstated at  
various times throughout the period from on or about December 6, 1995, through on or  
5 about October 30, 2000. Defendant DONAVON C. CLAFLIN was employed by HMC  
beginning in 1995 and from at least as early as 1997 was HMC's treasurer and the  
6 authorized signer for most of the bank accounts maintained by HMC. The Articles of  
Incorporation for HMC provided that the corporate purposes of HMC were "[t]o operate  
7 health and exercise clubs, and related facilities" and "[t]o engage in any business, trade or  
activity which may be conducted lawfully by a corporation organized under the  
8 Washington State Business Corporation Act." The Articles of Incorporation for HMC  
also provided that "[t]his corporation is authorized to issue 10,000 shares of common  
9 stock and each share shall have a par value of \$1.00." On February 5, 1997, HMC filed  
Articles of Amendment that provided, among other things, that "[t]his corporation is  
10 authorized to issue 15,000,000 shares of common stock and each share shall have a par  
value of \$1.00." On or about December 26, 2001, HMC ceased to exist as a Washington  
11 State corporation and merged with a Delaware corporation known as HMC Acquisition  
Corp., a wholly-owned subsidiary of Znetix, Inc. Also on or about December 26, 2001,  
12 HMC Acquisition Corp. changed its name to Health Maintenance Centers, Inc.

13 b. Project X, Inc., was incorporated in the State of Washington on  
November 3, 1999. On October 3, 2000, Project X filed Articles of Amendment with the  
14 Washington State Secretary of State changing its name to Znetix, Inc. On or about  
September 25, 2001, Znetix, Inc., ceased to exist as a Washington State corporation and  
15 merged with a Delaware corporation known as Znetix, Inc.

16 c. From in or about 1995 through a time unknown but at least until in  
or about October 2001, HMC, Project X, and Znetix, and affiliated entities, through  
17 various sales agents and at the direction and with the participation of persons known and  
unknown to the United States Attorney, including defendant DONAVON C. CLAFLIN,  
18 solicited and received in excess of \$50 million from investors. At no time were the offers  
and sales of securities issued by HMC, Project X, Znetix, and affiliated entities registered  
19 with the United States Securities and Exchange Commission, the State of Washington  
Department of Financial Institutions, Securities Division, or with the securities regulatory  
20 authorities in any other state.

21 d. On or about April 9, 2001, the State of Washington Department of  
Financial Institutions, Securities Division, issued a Summary Order to Cease and Desist  
22 against HMC and an individual known to the United States Attorney. The Cease and  
Desist Order, among other things, barred HMC (and its employees, officers and directors,  
23 including defendant DONAVON C. CLAFLIN) from selling securities through  
fraudulent representations and material omissions, and in violation of the State of  
24 Washington's securities registration statute.

25 e. Cascade Pointe LLC was a limited liability company formed in  
Washington State on or about May 2, 2001. Cascade Pointe of Arizona LLC was a  
26 limited liability company formed in Arizona in or about July, 2001. Cascade Pointe of  
Nevis LLC was a limited liability company established in the Carribean nation of Nevis  
27  
28

1 on or about July 26, 2001.<sup>1</sup> From on or about May 2, 2001 through in or about January  
2 2002, Cascade Pointe, through various sales agents and at the direction of persons known  
3 and unknown to the United States Attorney, solicited and received in excess of \$12  
4 million from investors. During at least a portion of this period, defendant DONAVON C.  
5 CLAFILIN maintained bank accounts that received deposits of over \$7 million raised by  
6 Cascade Pointe from investors. At no time were the offers and sales of securities issued  
7 by Cascade Pointe and affiliated entities registered with the United States Securities and  
8 Exchange Commission, the State of Washington Department of Financial Institutions,  
9 Securities Division, or with the securities regulatory authorities in any other state.

#### 10 OBJECTS OF THE CONSPIRACY

11 The objects of the conspiracy were as follows:

12 f. To knowingly and willfully obtain money and property by means of  
13 omissions to state material facts necessary in order to make the statements, in light of the  
14 circumstances under which they were made, not misleading, and engage in acts, practices,  
15 and courses of business that operated and would operate as a fraud or deceit upon  
16 purchasers in the offer and sale of securities issued by HMC, Project X, Znetix, Cascade  
17 Pointe, and affiliated entities by the use of the means and instruments of transportation  
18 and communication in interstate commerce and of the mails, in violation of Title 15,  
19 United States Code, Sections 77q(a) and 77x;

20 g. To knowingly and willfully cause to be carried through the mails and  
21 in interstate commerce, for the purpose of sale or delivery after sale, securities for which  
22 no registration statement was in effect, in violation of Title 15, United States Code,  
23 Sections 77e(a)(2) and 77x;

24 h. To knowingly and willfully participate in using and causing the  
25 United States mail and interstate couriers to be used in furtherance and execution of a  
26 scheme and artifice to defraud investors in HMC, Project X, Znetix, Cascade Pointe, and  
27 affiliated entities, and a scheme and artifice for obtaining money and property of said  
28 investors by means of false and fraudulent pretenses, representations and promises, in  
violation of Title 18, United States Code, Section 1341;

#### 1 MANNER AND MEANS OF THE CONSPIRACY

2 i. The essence of the conspiracy and scheme to defraud was that  
3 investors in HMC, Project X, Znetix, and Cascade Pointe were falsely promised that if  
4 they purchased securities issued by these companies for one dollar per share, they would  
5 be greatly enriched at the point when Znetix engaged in an initial public offering ("IPO")  
6 and had its shares traded on public exchanges such as NASDAQ. Investors who  
7 purchased HMC stock were told that they would receive four shares of Znetix for every  
8 share of HMC. Investors were led to believe that the IPO was imminent and that after the  
9 IPO the stock would be traded at prices substantially above one dollar per share, but at no  
10 time did Znetix have any ability to engage in an IPO, and at no time did Znetix have any  
11 relationship with investment banking or underwriting firms who were working on an IPO  
12 for Znetix.

13 j. It was a part of the conspiracy and scheme to defraud that in the offer  
14 and sale of the securities issued by HMC, Project X, Znetix, and Cascade Pointe,  
15 defendant DONAVON C. CLAFILIN and others known and unknown to the United States

16 <sup>1</sup> Cascade Pointe LLC, Cascade Pointe of Arizona LLC, and Cascade Pointe of Nevils  
17 LLC are collectively referenced in this Information as "Cascade Pointe."

1 Attorney knowingly and willfully failed to truthfully and accurately disclose in a  
2 registration statement, prospectus, private placement memorandum or in any other form  
material facts, including but not limited to:

3 i. the uses to which investors' money would be put, including  
4 that the investors' money had been and would be used to purchase millions of dollars  
worth of luxury cars, boats, homes, jewelry, and other items;

5 ii. the financial condition of HMC, Project X, Znetix, and  
6 Cascade Pointe;

7 iii. the lack of financial controls at HMC, Project X, Znetix, and  
8 Cascade Pointe;

9 iv. the compensation to be received by defendant DONAVON C  
10 CLAFLIN and others associated with HMC, Project X, Znetix, and Cascade Pointe;

11 v. that HMC, Project X, Znetix, and Cascade Pointe were under  
common management and control;

12 vi. that HMC had sold more than its authorized amount of shares.

13 k. It was a part of the conspiracy and scheme to defraud that the  
14 coconspirators used millions of dollars of investor funds to promote the scheme by  
sponsoring hydroplane and offshore racing boats, the Seattle Mariners major league  
baseball team, and other prominent organizations and events, by hosting lavish parties in  
Los Angeles and elsewhere, and by paying professional sports stars to wear items  
imprinted with the Znetix logo.

15 l. It was a part of the conspiracy and scheme to defraud that defendant  
16 DONAVON C. CLAFLIN and others known and unknown to the United States Attorney  
17 paid employees, consultants and sales agents of Znetix, HMC, Cascade Pointe, and  
related entities unreasonably high salaries, commissions, and other compensation to work,  
wittingly or unwittingly, in furtherance of the conspiracy and scheme to defraud.

18 m. It was a part of the conspiracy and scheme to defraud that the  
19 coconspirators employed multi-level marketing techniques and various sales agents to sell  
20 the securities of HMC, Znetix, and Cascade Pointe to over five thousand investors  
throughout the United States.

21 n. It was a part of the conspiracy and scheme to defraud that defendant  
22 DONAVON C. CLAFLIN and others known and unknown to the United States Attorney  
23 signed and issued thousands of stock certificates and promissory notes to investors, some  
of which were backdated.

#### 24 OVERT ACTS

25 In furtherance of the conspiracy, and to promote the objects thereof,  
26 defendant DONAVON C. CLAFLIN and others known and unknown to the United States  
Attorney committed and caused to be committed, among others, the overt act described in  
Count 2 of the Information, and the following:

27 o. On or about April 10, 1998, defendant CLAFLIN signed check  
28 number 1661 in the amount of \$5,830.34, drawn on a U.S. Bank account in the name of  
American HMC LLC, payable to "Brothers" for the purchase of a 1997 Bombardier jet  
ski watercraft.

1 p. On or about December 10, 1999, defendant CLAFLIN signed a  
2 "Corporate Resolution & Stock Certificate" reflecting a \$5,000 investment in HMC by an  
investor with the initials M.S. located in Kirkland, Washington.

3 q. On or about January 13, 2000, defendant CLAFLIN signed a  
4 "Corporate Resolution & Stock Certificate" reflecting a \$4,000 investment in HMC by an  
investor with the initials M.S. located in Kirkland, Washington.

5 r. On or about June 26, 2000, a cashier's check was purchased in the  
6 amount of \$25,000, with funds from a U.S. Bank account in the name of Health  
Maintenance Centers, Inc., payable to Europa for a 2000 Mercedes Benz 500CV  
7 automobile.

8 s. On or about August 4, 2000, defendant CLAFLIN signed check  
9 number 1103 for the amount of \$10,000, drawn on a U.S. Bank account in the name of  
National Alliance, payable to Phil Smart for a 2000 Mercedes ML55 automobile.

10 t. On or about September 29, 2000, defendant CLAFLIN authorized a  
11 wire transfer in the amount of \$53,178.82, with funds from a U.S. Bank account in the  
name of Health Maintenance Centers, Inc., payable to Transnation Title Insurance  
12 Company for the purchase of a condominium in Redmond, Washington, for his own  
personal use.

13 u. On or about December 15, 2000, defendant CLAFLIN authorized  
14 check number 1201 in the amount of \$18,983.72, drawn on a U.S. Bank account in the  
name of National Alliance, Inc., payable to Nuvell Financial Services for the payoff  
purchase of a 1994 Landrover ROV.

15 v. On or about December 27, 2000, defendant CLAFLIN purchased  
16 cashier's check number 5021882717 in the amount of \$25,000, with funds from a U.S.  
Bank account in the name of Project X, Inc., payable to Executive Auto Consultants for  
the purchase of a 2000 Mercedes G500 automobile.

17 w. On or about February 9, 2001, defendant CLAFLIN signed an  
18 unnumbered counter check in the amount of \$20,000, drawn on a First Mutual Bank  
account in the name of Health Maintenance Centers, Inc.- American Integrated Health,  
19 payable to Title Guaranty Escrow Services for the purchase of property in Princeville,  
Hawaii

20 x. On or about March 7, 2001, defendant CLAFLIN signed a  
21 "Corporate Resolution & Stock Certificate" reflecting a \$7,000 investment in HMC by an  
investor with the initials N.S. located in Aliso Viejo, California, and backdated such  
22 Corporate Resolution & Stock Certificate to December 31, 2000.

23 y. On or about March 23, 2001, defendant CLAFLIN authorized a wire  
24 transfer in the amount of \$725,000, with funds from a First Mutual Bank account in the  
name of Health Maintenance Centers, Inc.- American Integrated Health, payable to Title  
Guaranty Escrow Services for the purchase of property in Princeville, Hawaii.

25 z. On or about March 26, 2001, defendant CLAFLIN authorized a wire  
26 transfer in the amount of \$90,000, with funds from a First Mutual Bank account in the  
name of Health Maintenance Centers, Inc.- American Integrated Health, payable to Hall  
27 Pantera, Inc., for the purchase of a 1972 DeTomaso Pantera automobile.

1       aa.   On or about April 3, 2001, defendant CLAFLIN authorized a wire  
2 transfer in the amount of \$24,635.29 drawn on a U.S. Bank account in the name of  
National Alliance, Inc., payable to Knight & Fraser Capital LTD.

3       bb.   On or about April 6, 2001, defendant CLAFLIN authorized a wire  
4 transfer in the amount of \$174,698.75, with funds from a First Mutual Bank account in  
the name of Health Maintenance Centers, Inc.- American Integrated Health, to The Bank  
5 of Nova Scotia, Nassau, Bahamas, for account number 6077-18 in the name of Graham,  
Thompson & Co.

6       cc.   On or about April 17, 2001, defendant CLAFLIN signed check  
7 number 1096 in the amount of \$330,000, drawn on a First Mutual Bank account in the  
name of Health Maintenance Centers, Inc.- American Integrated Health, payable to Lido  
8 Jewelry; the money was used for the purchase of a seven carat diamond ring.

9       dd.   On or about June 29, 2001, defendant CLAFLIN signed a  
Promissory Note in the amount of \$10,000, payable from HMC, Inc., to an investor with  
10 the initials D.N. located in Houston, Texas.

11       ee.   On or about July 24, 2001, defendant CLAFLIN signed a Promissory  
Note in the amount of \$901,500, payable from HMC, Inc., to an investor with the initials  
12 N.S. located in Aliso Viejo, California.

13       ff.   On or about August 10, 2001, defendant CLAFLIN signed check  
14 number 11063 in the amount of \$50,000, drawn on a Wells Fargo Bank account in the  
name of Health Maintenance Centers, Inc., dba HPC, payable to Nightwind Enterprises.

## 15                               COUNT 2 - SECURITIES FRAUD

16       On or about July 30, 1999, within the Western District of Washington, and  
elsewhere, the defendant, DONAVON C. CLAFLIN, in the offer and sale of shares of  
17 stock in Health Maintenance Centers, Inc. ("HMC"), securities within the meaning of  
Title 15, United States Code, Section 77b(a)(1), did knowingly and willfully obtain  
18 money and property by means of omissions to state material facts necessary to make the  
statements made, in the light of the circumstances under which they were made, not  
19 misleading; and engage in transactions, practices, and courses of business which operated  
and would operate as a fraud and deceit upon the purchaser, in that defendant CLAFLIN  
20 did knowingly and willfully use and cause to be used the mails and means and  
instruments of transportation and communication in interstate commerce to issue a  
21 "Corporate Resolution & Stock Certificate" reflecting the purchase of 5,000 shares of  
HMC stock by investors with the initials D.K. and D.K. located in Antelope, Oregon, and  
22 to send such document from a place within the Western District of Washington to  
Antelope, Oregon.

### 23                               11. Cooperation.

24               a.   Defendant shall cooperate completely and truthfully with law  
25 enforcement authorities in the investigation and prosecution of other individuals involved  
26 in criminal activity. Such cooperation shall include, but not be limited to, complete and  
27 truthful statements to law enforcement officers, as well as complete and truthful  
28 testimony, if called as a witness before a grand jury, or at any state or federal trial, retrial,

1 or other judicial proceedings. Defendant acknowledges that this obligation to cooperate  
2 shall continue after Defendant has entered guilty pleas and sentence has been imposed, no  
3 matter what sentence Defendant receives; Defendant's failure to do so may constitute a  
4 breach of this Plea Agreement.

5           b. Defendant understands that the United States will tolerate no  
6 deception from him. If, in the estimation of the United States Attorney, information or  
7 testimony provided from the date of the Plea Agreement, proves to be untruthful or  
8 incomplete in any way, regardless of whether the untruthfulness helps or hurts the United  
9 States' case, the United States Attorney for the Western District of Washington may  
10 consider that Defendant has breached this Plea Agreement.

11           c. The United States Attorney's Office for the Western District of  
12 Washington, in turn, agrees not to prosecute Defendant for any other offenses, other than  
13 crimes of violence, that Defendant may have committed in the Western District of  
14 Washington prior to the date of this Agreement about which: (1) the United States  
15 presently possesses information; or (2) Defendant provides information pursuant to this  
16 Agreement to cooperate with the authorities.

17           d. The parties agree that information provided by Defendant in  
18 connection with this Plea Agreement shall not be used to determine Defendant's sentence,  
19 except to the extent permitted by U.S.S.G. § 1B1.8.

20           e. In exchange for Defendant's cooperation, as described above, and  
21 conditioned upon Defendant's fulfillment of all conditions of this Plea Agreement, the  
22 United States Attorney agrees to consider filing a motion, pursuant to U.S.S.G. § 5K1.1,  
23 permitting the Court to sentence Defendant to less than the otherwise applicable  
24 Sentencing Guideline range.

25           f. Defendant agrees that his sentencing date may be delayed based on  
26 the United States' need for his continued cooperation, and agrees not to object to any  
27 continuances of his sentencing date sought by the United States.

1       12.   Acceptance of Responsibility. The United States acknowledges that if  
2 Defendant qualifies for the two-point acceptance of responsibility adjustment pursuant to  
3 U.S.S.G. § 3E1.1(a), and if the offense level is sixteen (16) or greater, Defendant's total  
4 offense level should be decreased by an additional one (1) level pursuant to U.S.S.G.  
5 § 3E1.1(b), because Defendant has assisted the United States by timely notifying the  
6 authorities of his intention to plead guilty, thereby permitting the United States to avoid  
7 preparing for trial and permitting the Court to allocate its resources efficiently.

8       13.   Non-Prosecution of Additional Offenses. If the defendant complies fully  
9 with this Plea Agreement, the United States Attorney's Office for the Western District of  
10 Washington agrees not to prosecute Defendant for any additional offenses known to it as  
11 of the time of this Agreement that are based upon evidence in its possession at this time,  
12 or that arise out of the conduct giving rise to this investigation. In this regard, Defendant  
13 recognizes that the United States has agreed not to prosecute all of the criminal charges  
14 that the evidence establishes were committed by Defendant solely because of the  
15 promises made by Defendant in this Agreement. Defendant acknowledges and agrees,  
16 however, that for purposes of preparing the Presentence Report, the United States  
17 Attorney's Office will provide the United States Probation Office with evidence of all  
18 relevant conduct committed by Defendant. The agreement stated in this paragraph does  
19 not apply to crimes of violence.

20       14.   Voluntariness of Plea. Defendant acknowledges that he has entered into  
21 this Plea Agreement freely and voluntarily, and that no threats or promises, other than the  
22 promises contained in this Plea Agreement, were made to induce Defendant to enter these  
23 pleas of guilty.

24       15.                               In the event that this Agreement is not accepted by  
25 the Court for any reason, or Defendant has breached any of the terms of this Plea  
26 Agreement, the statute of limitations shall be deemed to have been tolled from the date of  
27 the Plea Agreement to the later of: (1) 30 days following the date of non-acceptance of  
28


1 the Plea Agreement by the Court; or (2) 30 days following the date on which a breach of  
2 the Plea Agreement by Defendant is discovered by the United States Attorney's Office.

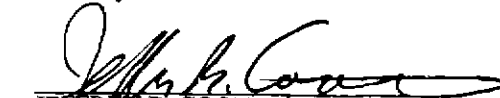
3 16. Post-Plea Conduct. Defendant understands that the terms of this Plea  
4 Agreement apply only to conduct that occurred prior to the execution of this Agreement.  
5 If, after the date of this Agreement, Defendant should engage in conduct that would  
6 warrant an increase in Defendant's adjusted offense level or justify an upward departure  
7 under the Sentencing Guidelines (examples of which include, but are not limited to:  
8 obstruction of justice, failure to appear for a court proceeding, criminal conduct while  
9 pending sentencing, and false statements to law enforcement agents, the probation officer  
10 or Court), the United States is free under this Agreement to seek a sentencing  
11 enhancement or upward departure based on that conduct.

12 17. Completeness of Agreement. The United States and Defendant  
13 acknowledge that these terms constitute the entire Plea Agreement between the parties.  
14 This Agreement only binds the United States Attorney's Office for the Western District of  
15 Washington. It does not bind any other United States Attorney's Office or any other  
16 office or agency of the United States, or any state or local prosecutor.

17 DATED: This 30<sup>th</sup> day of July, 2002.

18  
19   
20 DONAVON C. CLAFLIN  
Defendant

21  
22   
23 DAVID B. BUKEY  
Attorney for Defendant

24  
25   
26 JEFFREY B. COOPERSMITH  
Assistant United States Attorney